

REMARKS

Claims 1-8, 21-30, and 53-54 are currently pending.

Claims 1-8, 21-30, and 53-54 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious and unpatentable over U.S. Patent Application Publication US2002/0134486 (hereinafter “Brumbelow”). In rejecting these claims, the Examiner contends that the claimed feature of a foam cushion backing having a thickness of greater than 0.075 inches (as set forth in independent Claims 1 and 21) although not taught or even suggested by Brumbelow, is nevertheless an optimum value of a result effective variable, the discovery of which would allegedly have occurred through routine skill in the art. Applicant respectfully disagrees.

In support of the rejection, the Examiner specifically relies upon the holding of *In re Boesch* that discovering an optimum value of a result effective variable only involves routine skill in the art. What the Examiner fails to appreciate however is that discovering an optimum value of an allegedly result effective variable can only be considered *prima facie* obvious if the disputed feature is identified or at least suggested in the relied upon art as a result-effective variable. See *In re Antonie*, 559 F.2d 618, 195 U.S.P.Q. 6 (CCPA 1977). That is, the skilled artisan would not attempt to optimize the thickness of a foam cushion layer if the artisan did not first understand from Brumbelow that there exists a relationship between the foam cushion thickness and a desired result. Here, the Examiner contends that an increase in the foam thickness would result in an increase in material costs, an increase in resiliency, and/or an increase in absorption properties. However, Brumbelow is completely silent with respect to the thickness of any foam layers and similarly fails to identify or suggest any relation between layer thickness and the cost, resiliency, or absorption properties thereof. Thus, one of ordinary skill in the art would not have been motivated by Brumbelow to optimize the thickness of a foam layer much less to arrive at a thickness greater than 0.075 inches as set forth in Claims 1 and 21 and those claims depending therefrom.

CONCLUSION

In view of the foregoing Remarks, it is respectfully asserted that the rejections set forth in the Office Action of December 12, 2007 have been overcome and that the application is in condition for allowance. Therefore, Applicant respectfully seeks notification of same.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

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June 12, 2008

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Date